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CHARLES ELMORE CROPLEY
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In the Supreme Court of the United States

1941 TERM

No. [redacted] 1275

ENTERPRISE BOX COMPANY,

PETITIONER, APPELLANT BELOW,

vs.

THOMAS W. HOLLAND,
As Successor of PHILIP B. FLEMING, Administrator of the Wage and Hour Division, United States Department of Labor,

RESPONDENT, APPELLEE BELOW,

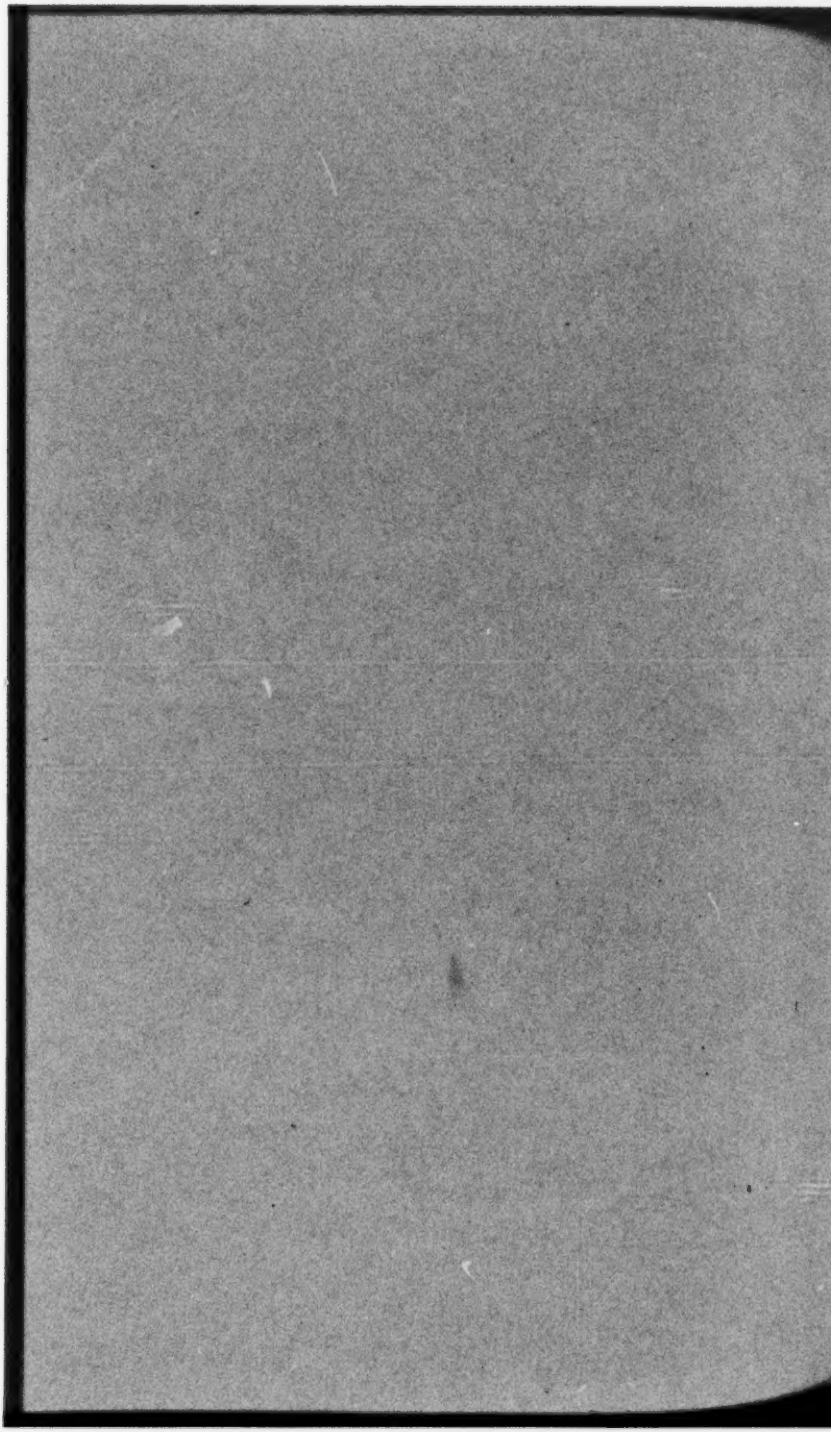
PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH JUDICIAL CIRCUIT

and

BRIEF IN SUPPORT THEREOF.

MARTIN CARABALLO, Tampa, Florida,
Attorney for Petitioner

JOHN G. GRAHAM, Tampa, Florida,
Of Counsel



In the Supreme Court of the United States

No. 9909

ENTERPRISE BOX COMPANY,
PETITIONER, APPELLANT BELOW,

vs.

THOMAS W. HOLLAND,
As Successor of PHILIP B. FLEMING, Administrator of the Wage and Hour Division, United States Department of Labor,
RESPONDENT, APPELLEE BELOW,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH JUDICIAL CIRCUIT
and
BRIEF IN SUPPORT THEREOF.

To the Honorable Owen J. Roberts, Chief Justice of the Supreme Court of the United States, and to the Associate Justices Thereof:

Your petitioner respectfully shows:—

I

SUMMARY STATEMENT OF MATTER INVOLVED

This case involves the construction of certain provisions of the Fair Labor Standards Act and their ap-

plicability to the activities and business of the petitioner. The facts in the case are undisputed and are in effect as follows:

The petitioner is a Florida corporation engaged in the manufacture of cigar boxes for use as containers for cigars produced by cigar factories. Its entire output is sold intrastate to local cigar factories.

The cigar factories to whom petitioner's boxes were sold, sell a large proportion of their cigars in interstate commerce, no charge being made the purchaser of the cigars for the containers in which they are enclosed. By law, these containers, when once filled with cigars, can not be refilled, reused nor trafficked in, and are subject to destruction by Revenue Agents when emptied.

The petitioner at the time of sale had knowledge of such intended use of its product by the cigar factories.

In the operation of its business the petitioner did not comply with Sections 6, 7 and 11 of the Act. See Record Pages 10 to 13 inclusive.

II

JURISDICTION

On the 20th day of May, 1940, the respondent, contending that the petitioner under the facts stated above was engaged in the production of goods for commerce and had violated Section 15 (a) (1) of the Act in selling its goods with knowledge that shipment,

delivery and sale in commerce was intended, instituted this suit in the United States District Court for the Southern District of Florida, praying that petitioner be enjoined from further violations of the provisions of the Act. Record pages 1 to 6 inclusive.

The Petitioner, contending that the Act had no application to its activities, by its answer denied that it was engaged in the production of goods for commerce or that it had sold the same with knowledge that shipment, delivery or sale in commerce was intended, and alleged that all of its manufactured products were sold intrastate, and that the Fair Labor Standards Act had no application to its business. Record pages 6 to 9 inclusive.

On the trial of the case the facts above stated being presented to the District Court, the judge thereof filed his Findings of Fact and Conclusions of Law in which he held that Congress could regulate purely local transactions that *affected* interstate commerce or the flow of goods in commerce, and that Congress intended by the use of the words "sell with knowledge of intent" in Section 15 (a) (1) to prohibit the sale of goods intrastate if interstate commerce was *affected,* and issued its injunction prohibiting the petitioner from further violating the several provisions of the Act. Record pages 13 to 26 inclusive.

An appeal was taken by the petitioner from the decree so entered to the United States Circuit Court of Appeals for the Fifth Judicial Circuit, which Court on February 26, 1942, sustained the decision of the Lower Court. Record, pages 35 to 40 inclusive.

That on the 16th day of March, 1942, the petitioner filed its motion for a rehearing. Record, page 41.

That said motion for a rehearing was, on the 24th day of March, 1942, denied by the said Court. Record, page 44.

This petition for a writ of certiorari is being mailed in time to be filed before June 22nd, 1942.

The petitioner files this petition for a writ of certiorari with the United States Supreme Court to review the decision of the Circuit Court of Appeals, under the provisions of Title 28, U.S.C.A., Section 347. Judicial Code, Section 240 as amended.

III

QUESTIONS PRESENTED

Question One.

Did Congress, in enacting the Fair Labor Standards Act, intend to include within its provisions industries producing and selling their products intrastate when such sales were made in good faith and without intent to evade the provisions thereof. In other words, did Congress intend that the Fair Labor Standards Act apply to any and all industries whose activities *affect* interstate commerce, or are the provisions of said Act limited in their application to industries which are *themselves* engaged in commerce or in the production of goods for commerce.

Question Two

Where by law cigar box containers can not be re-used, refilled nor trafficked in, and are subject to destruction by Revenue Agents when emptied, will a shipment of cigars interstate by cigar factories, packed in such containers, be deemed to be a shipment in commerce of the *containers* within the meaning and intent of the Fair Labor Standards Act.

IV

REASONS FOR ALLOWANCE OF WRIT

1. The decision of the Circuit Court of Appeals to the effect that Congress intended the provisions of the Act to include activities and sales *affecting* interstate commerce is in conflict with the decision of the United States Circuit Court of Appeals for the Tenth Judicial Circuit on the same matter in the case of *Jewell Tea Company vs. Williams,* 118 Fed. 2nd, page 202.

2. The decision of the Circuit Court of Appeals is an erroneous decision of an important question of general law.

3. The decision of the Circuit Court of Appeals involves an important question of Federal law which has not been, but should be, settled by this Court.

4. The decision of the Circuit Court of Appeals is a decision of a Federal question in a way probably in conflict with applicable decisions of this Court.

5. The great importance to the business world and the legal profession of the Statute involved calls for an authoritative and elucidating decision as to the penal provisions of the Act.

Wherefore petitioner prays that a Writ of Certiorari be issued under the seal of this Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals had in the case numbered and formerly entitled on its docket, "Number 9909, Enterprise Box Company, Appellant, vs. Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, Appellee," and now proceeding, by substitution, against Thomas W. Holland, successor administrator, to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States, and that the judgment of said Circuit Court be reversed by this Court, and for such other relief as to the Court may seem proper.

Dated at Tampa, Florida, on this the 26th day of May, 1942.

ENTERPRISE BOX COMPANY,

By MARTIN CARABALLO,
Counsel for Petitioner.

JOHN G. GRAHAM,
Of Counsel.